



CONNECTICUT BAR EXAMINATION

26 July 2011

QUESTION #1

Following the attacks on the World Trade Center on 9/11, and the anthrax scares, Congress passed the Homeland Security Act (Act), which established the Department of Homeland Security (DHS) as a cabinet-level agency. Congress gave the DHS broad authority to “protect” the United States by promulgating rules and regulations relating to national security, especially deadly bio-hazards. The Act also authorized the DHS to administer and enforce the Act, as well as to conduct adjudicatory proceedings.

The Act contained the following provisions relating to bio-terrorism:

No one (including corporations and other fictional entities) may store, ship or manufacture bio-hazardous material without a federal permit. Permits can only be issued by the DHS, and will only be granted when the following conditions are met: 1) The applicant shows a legitimate (non-terrorist) reason for possessing the bio-hazard; 2) The interest is sufficiently compelling to warrant allowing the applicant to possess the bio-hazard; 3) The applicant shows that he/she has a security plan designed to insure that the bio-hazard will be safe from theft or misappropriation; 4) The applicant has never been convicted of a crime; & 5) The applicant agrees not to transfer the bio-hazard or remove it from a secure place without DHS approval. Anyone who violates this Act may be subjected to civil and/or criminal penalties, including a prison term of up to 20 years and a fine of up to \$100,000.

The University of Vermont School of Medicine (School of Medicine) does research on flu and flu vaccines, and also conducts flu vaccination drives. For healthy people, the flu is rarely deadly, but can make those who come into contact with it very sick. For the elderly, the sick, or those with compromised immune systems, the virus can be quite deadly.

Although the School of Medicine is focused on vaccines rather than on the virus, it must have virus cultures to test the effectiveness of its vaccines, and the vaccine itself contains traces of the disease. The School of Medicine does its best to ensure that its vaccines are safe, but it is a simple fact of life that all vaccines have downside consequences, and can be deadly for some people.

To confirm its obligations under the Act, the School of Medicine contacted DHS to inquire whether its handling of the flu vaccine fell within the coverage of the Act. In the letter, the School of Medicine indicated that it has no doubt that its handling of the flu virus is covered under the Act, but that it is unsure whether the Act applies to the vaccine. DHS sent the school a letter which stated that “the Act speaks for itself” and that “a fair reading of the Act indicates that the flu and flu vaccine are covered items.”

The School of Medicine was distressed by the DHS’ response. The School of Medicine believes that it would have no difficulty complying with some of the Act’s requirements, including those requiring the showing of a legitimate (non-terrorist) reason for possessing the vaccine, and it believes that it can show a sufficiently compelling interest to warrant possessing the bio-hazard. In addition, the School of Medicine is quite willing to ensure that the vaccine is handled only by someone who has not been convicted of a crime. Nevertheless, the School of Medicine is worried by the fact that some of the Act’s other requirements seem quite burdensome as applied to vaccines. In particular, the School of Medicine objects to the requirement that it have a “security plan” designed to insure that the vaccine is safe from theft or misappropriation, and that it agrees not to transfer the vaccine or remove it from a secure place without DHS approval. In the School of Medicine’s view, a vaccine is quite different from anthrax spores or the smallpox virus. While the public needs to be shielded from anthrax and smallpox, the point of a flu vaccine is to inoculate as many people as possible. Moreover, the vaccine is not inherently dangerous. As a result, vaccination drives are frequently held at shopping malls, pharmacies, and other places where the School of Medicine can get access to large numbers of people. The School of Medicine feels that it would be logistically difficult to maintain tight security and to notify the DHS every time it sought to have a “vaccination drive,” or to inoculate individuals.

The School of Medicine has come to you for legal advice. It wants to know whether it is bound by the DHS’ letter, and whether it should or must comply with the advice contained in the letter. The School of Medicine also wants to know how it should proceed. Discuss fully.



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QUESTION #2

David is the president of a small sales firm. Business has been slow this past year, leading David to terminate the employment of several employees. One of the terminated employees, Patrick, believes that he was chosen for termination because he had in recent months reported several workplace safety violations to federal authorities.

Patrick has sued David for wrongful termination, alleging that David's termination decision was motivated by impermissible retaliation. David's answer contends that Patrick was fired due to poor job performance.

Patrick will offer the following testimony and materials into evidence. Under the Federal Rules of Evidence, will each of the following pieces of evidence be admissible at trial? Discuss your answers fully.

- A. Patrick will testify that, after learning of his impending termination, he accused David, stating that "you fired me because of my safety complaints and for no other reason." David offered no response and just walked away.
- B. Patrick will testify that Jim, a customer of the company, once told him that "you (Patrick) are the smartest salesperson in the business" and that "I like dealing with you."
- C. Patrick offers one of the many annual job performance evaluations found in his employment file; the evaluation records a statement made by Jim that "Patrick is a wonderful salesman."



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QUESTION #3

Amy, Ben and Carl were the sole shareholders in ABC Corporation (ABC). ABC's by-laws set the number of directors at twelve (12), and authorized a quorum of one-third ($\frac{1}{3}$) of the directors. None of the shareholders or their relatives served on the board.

Six (6) directors were present at a board meeting on May 12, 2007. After ABC's accountant reported that she expected ABC to weather the anticipated downturn in the economy, the board voted five (5) to one (1) to declare a cash dividend of \$100 per share and a share dividend of one (1) new ABC share for each outstanding share of ABC stock. The dividends were to be paid on August 1, 2007. Three (3) directors then left to catch a plane. The remaining directors voted unanimously to hire a plant supervisor before adjourning.

The economic decline was sharp and more sudden than expected. By late July 2007, ABC was unable to pay its bills. Still, ABC paid out the cash and share dividends on August 1, 2007.

- A. Was the board's declaration of the dividends effective? Discuss fully the potential problems and who, if anyone, is liable.
- B. Was the hiring of the supervisor effective? Explain fully.



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QUESTION #4

Vicky attended a dinner at the Community Church (Church). It was a fundraiser for an addition to the church, and she paid for the meal. She contracted food poisoning and died. The cause was E. coli bacteria. A number of other people at the event also were sickened. The source of harm was ground beef made into meatballs in the church kitchen. Northern Meats (Northern) produced the ground beef. Toby's Super Value (Toby's) sold the ground beef in its original package to Church. Genetic tests on the E. coli that killed Vicky show that it is a match for bacteria found at Northern's facility. There is, however, no evidence of negligence on the part of Northern or Toby's.

The state health inspector found that the church cooks wore gloves while preparing the food. Although one of the three sinks in the kitchen was designated for hand washing while the other two were for use in food preparation, in fact all three were used for hand washing. Also, when the meatballs came out of the oven, the cooks did not use a meat thermometer to make sure that they were cooked. Instead, they cut open a couple to see if they were done.

E. coli bacteria are a common health hazard in meat preparation. The bacteria are usually killed by cooking meat to at least 160 degrees. However, if the cooked meat comes in contact with surfaces, utensils, or hands that have already been contaminated, the meat can be re-infected.

Vicky's family has contacted you to ask whether any entity could be liable for Vicky's death. Discuss fully whether Northern, Toby's, and/or Church could be liable for her death and on what basis.



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QUESTION #5

Upon the death of George Latimer, his duly executed will was probated and the bulk of his estate was distributed to his testamentary trustee, the Fidelity Trust Company (Fidelity). The terms of the testamentary trust were as follows: Fidelity was to pay the income of the trust annually to his widow, Lily, and upon her death, the trust was to terminate and the accumulated income and principal was to be paid to George and Lily's two sons, Abel and Baker. The trust contained the usual spendthrift provision restraining the voluntary and involuntary alienation of the interests of the beneficiaries.

For the past five (5) years, Fidelity has been administering the trust and paying out the net income to Lily on an annual basis. Pursuant to the terms of the trust, Fidelity is instructed to invest the trust assets in bonds issued by the United States government and Fidelity has, for the past five (5) years, complied with this directive.

Lily has no other resources and has been relying on the trust income and the generosity of her sons to meet her living expenses. As Lily has aged, she has increasing medical expenses not covered by governmental programs. Lily, Abel, and Baker have requested that Fidelity consider their requests to either terminate the trust or to change its terms.

Specifically, Lily, Abel and Baker have requested that Fidelity: (1) terminate the trust immediately as Lily, Abel and Baker have all agreed to terminate the trust with each beneficiary receiving one-third ($\frac{1}{3}$); or (2) if termination is not possible, change the terms of the trust to allow Fidelity to either (a) invest in assets other than bonds issued by the United States government or (b) to change the terms of the trust such that Lily would receive a sum certain annually from the trust.

Advise Fidelity as to whether such changes may be made without a court order and the likelihood of whether a court would grant the types of relief requested by Lily, Abel, and Baker. Explain fully.



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QUESTION #6

Client A is represented by Attorney in the purchase of a home. For a fee of \$3000, the representation will last from August to December.

In October, Client B comes to Attorney about filing a \$200,000 personal injury case against Client A on a contingent fee basis. The statute of limitations of the claim will run in November.

Discuss fully the issues in professional responsibility that Attorney must resolve before agreeing to represent Client B.

Multistate Essay Examination Question Topics*
Administered by the Connecticut Bar Examining Committee on
26 July 2011

Question 7:	Secured Transactions (UCC-9)
Question 8:	Criminal Law
Question 9:	Real Property
Question 10:	Civil Procedure
Question 11:	Constitutional Law
Question 12:	Agency & Partnership

***Questions 7-12 will be posted after 15 November 2011.**